IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8627 OF 2007

Smt.Shevantabai Tukaram Sakpal ...Petitioners

Versus

Mr.Namdeo Gopal Sakpal

since deceased by following heirs

Smt.Heerabai Namdeo Sakpal

and Ors. ....Respondents

Mr.J.J.Jamdar, for the petitioners.

Mr.S.K.Shetty, for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

13th December, 2007.

P.C. :

1. Although the Writ Petition was placed for orders, so as to enable Mr.Jamdar to comply with the office remarks, it appears that the service is complete and Mr.Shetty is representing all respondents. In such circumstances, the Writ petition is taken up by consent

for admission. Heard forthwith by consent.

2. The petitioner/original plaintiff has assailed the orders of the Trial Court refusing permission to her to examine witnesses. The petitioner is Shevantabai Tukaram Sakpal and has already deposed. One Mr.Milind Nile has also deposed on behalf of the petitioner. Another witness Mr.Dayanand Sakpal was to be examined and was summoned. He was present in court. However the petitioner's advocate despite he being present, refused to examine Dayanand Sakpal as the petitioner was not present in court. This led to the Learned Judge discharging the witness. Thereafter, the petitioner applied for permission to examine two more witnesses and that application is also rejected.

4. After this petition was heard for sometime, it is agreed between the parties that the petitioner will examine only two witness, one Dayanand Sakpal, whose Affidavit-in-lieu of examination-in-chief shall be filed within a period of one week from today and one Aba Mane, whose Affidavit-in-lieu of examination-in-chief shall be filed within a period of

two weeks form today. Both witnesses, if their Affidavits are filed and copies given to the respondents/defendants, shall be examined in the suit. If the petitioner refuses to keep them present or fails to file even their affidavits-in-lieu of examination-in-chief within the aforesaid period, no further opportunity to the petitioner to examine any further witness need to be given by the Trial Court.

5. The impugned orders are accordingly quashed and set aside. The Trial court to abide by the directions as issued in this order. For the petitioner to get the opportunity to examine these witnesses, that this order has been passed and for the delay she must compensate the respondent by payment of costs quantified at Rs.1500/-. Petition disposed off. No costs.

sd/-

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